



Public Safety and Fiscal Responsibility

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BUTLER MEANS EVERYONE WILL HAVE TERM SET

And if you didn't at your last hearing, you will soon.

In reaching a settlement in the Butler case some time ago the BPH agreed that going forward parole panels would begin calculating and announcing a base term for each inmate at the close of that inmate's next or initial hearing, whichever were to occur first, regardless of whether there was a grant or denial. However, as brought to the attention of the court by attorneys for the class of inmates affected by Butler, board panels failed to set those terms in approximately 1,600 hearings held since the settlement, primarily for prisoners who came under the terms of either youthful or elderly parole consideration.

In those cases, the setting of base terms was considered moot by BPH attorneys, based on the inmates' qualifying for either of those special parole hearings (as in order to qualify prisoners must meet both age and length of incarceration markers) and because of legislation passed last year that declared once found suitable for parole, inmates were to be released 'immediately,' absent the presence of a Thompson term sentence. Attorneys for the inmate class objected to those exceptions, and while BPH attorneys asked the court to modify the settlement to include the practice in settlement terms, the court declined to do so.

BPH has subsequently appealed that denial for modification of settlement terms to the state Supreme Court and everyone involved is awaiting the decision. In the meantime, in order to be in line with existing settlement terms, the board is mulling over the best way to both set terms for those 1,600 or so inmates and how to notify them of those calculations.

While it is conceivable that new hearings, strictly for the purpose of setting terms, could be ordered, at present the Board seems to be leaning more toward calculating the terms individually and providing each inmate affected with a Miscellaneous Decision document setting forth those calculations and terms. In a recent meeting BPH Executive Director Jennifer Shaffer and Chief Legal Counsel Jennifer Neill noted the significant impact on the board's hearing schedule that an additional 1,600 hearing

would cause, as well as the length of time it would take to get the hearings held and the resulting term calculations to prisoners.

It is important to note that this ruling and these practices apply only to indeterminate sentence length prisoners (ISL), or lifers. Those individuals with determinate sentence lengths (DSL) who may have received a YOPH or elderly hearing are not impacted by Butler, as by virtue of their sentence length being articulated at the time of sentencing their base term is considered to have been set.

Once the decision is set regarding how this situation will be rectified, and we expect that decision to be made and announced before end of year, we will provide information. In the meantime, all panels now holding hearings will be calculating and announcing base terms for all ISL inmates.

Executive Officer Shaffer indicated at the meeting that the board is considering posting the names of those included in this in-limbo group, so that attorneys and inmates who feel they should be included in this group can check to be sure they are indeed under consideration. If the list is posted, we will report in a future issue.



COMMISSIONER GRANT RATES

Although parole hearings and process has changed greatly over the last few years one thing still remains of interest to lifers; which commissioners give grants and which do not. And while it isn't as simple as that, it is nonetheless interesting to see where each commissioner falls in ranking.

Of course the number of grants given is impacted by many things, including the level of the institutions commissioners are assigned to visit. It is harder to get a grant at a Level IV prison, not so much because commissioners won't give grants there, but by in large (and there are exceptions) most lifers still at the high security levels are either early into their life term or, for one reason or another (usually more than one reason and several others) they aren't as prepared or they haven't reduced their point levels sufficiently to go down in levels. In CDCR, like golf, the lower the 'score,' the better.

Those inmates at Level III and Level II tend to be granted more often, in no small part because there are more programs to prepare inmates for suitability in those levels...we could spend days on that subject. But as a practical matter, those commissioners who more often are assigned to Level IV prisons will have a lower grant rate than those who chair hearings at more Level III and II institutions. While the BPH attempts to rotate most commissioners in various parts of the state, in practice there tend to be 'Northern' and 'Southern' commissioners, assigned by virtue of where they live. But be assured, any commissioner can show up at any prison at any time.

But, no one should go into a hearing thinking they will be either granted or denied simply based on who the commissioner is. It doesn't work that way anymore. And while we don't always agree with the commissioners' decisions (sometimes more strongly than others) it is possible now to get a grant from any commissioner.

In each issue of Lifer-Line's sister publication, California Lifer Newsletter, we publish a monthly chart by commissioner of number of hearing held, grant rate and lengths of denials. We don't publish actual per cent ages (which could be misleading) and it isn't a scientific method, to be sure, but it's an interesting snapshot of any given moment.

So here's a quick look, at the Month of August, 2016 and the year of 2015. Commissioners are listed in ascending order (lower grant rates listed first, higher rates down the line) for August, 2016, followed by results for 2015.

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|---|------------------------------------|
| 1) Elizabeth Richardson (resigned, August, 2016)) | 7) Ali Zarrinam |
| 2) Cynthia Fritz | 8) Brian Roberts |
| 3) Kevin Chappell | 9) Peter LaBahn (tied, Anderson) |
| 4) Marisela Montes | 10) Arthur Anderson (tied, LaBahn) |
| 5) Michelle Minor | 11) Jack Garner |
| 6) John Peck | 12) Terri Turner |

2015 numbers:

- | | |
|-------------------------------------|--------------|
| 1) Montes | 7) Minor |
| 2) Singh (resigned, December, 2015) | 8) LaBahn |
| 3) Richardson | 9) Zarrinam |
| 4) Roberts | 10) Anderson |
| 5) Garner | 11) Fritz |
| 6) Peck | 12) Turner |

So while rankings fluctuate, some things are pretty constant. Montes and Richardson (now gone) tended to be on the negative end, Turner and Anderson on the more positive end, and Peck squarely in the middle. The two newest commissioners, Kevin Chappell, appointed and confirmed the first of the year and Randy Grounds, appointed only August, are still too new on the block to make definitive analysis. But we're watching.

ONE NEW COMMISSIONER, TWO MORE TO COME

Filling the late-summer vacancy on the Parole Board, occasioned by the retirement of Commissioner Elizabeth Richardson, Governor Brown has appointed Randolph (Randy) Grounds, recently retired warden from SVSP, to the Board of Parole Hearings. Grounds was appointed August, 26, 2016 for a three-year term, subject to confirmation by the State Senate within a year of his appointment.

Grounds served as warden at Salinas Valley State Prison from 2012 to 2014, following his time there as an associate warden from 2007 to 2009. He previously served as warden at California Correctional Training Facility, Soledad from 2009 to 2012 and chief deputy warden at California State Prison, Solano in 2009.

He began his career in corrections as a deputy probation officer in El Dorado County in 1991, going on to become a correctional counselor at Lancaster and continuing in other posts including a facility captain at California Correctional Institution, Tehachapi from 2004 to 2007. Grounds is currently completing his commissioner training and should be chairing parole hearings in November.

Grounds appointment fills the usual Parole Board quota of 12 commissioners, however, under budgetary adjustments in the 2016-17 state budget two more commissioner positions have been funded, to deal with the expected increase in hearings held as the result of third strikers coming into the hearing cycle. No indications yet as to by whom, or even when, those new positions will be filled.



BASIC DUTIES OF STATE APPOINTED ATTORNEYS

For the past couple of years the BPH, as part of that agency's growing efforts toward transparency, has opened their training sessions for attorneys (mandatory for state appointed attorneys, optional but informational to private counsel) to public attendance. And this year again LSA members were the only 'public', non-lawyers in attendance. We love being trail blazers.

Of the many topics covered several are of prime interest to the end-user of legal services, the prisoners. We'll try to cover some of the major points here.

Basic expectations of the BPH for state appointed attorneys include:

- Meet in advance of 45-day deadline for postponements and waivers
- Review Hearing Packet
- Review C-File
- Review available BPH data sources for communication issues (i.e. language or hearing)
- Bring New BPH 1003 form

BPH Form 1003 is the means by which inmates can request substitution of counsel, usually replacing the state attorney with a privately hired one. It is important to note, if you are contemplating doing this, that this form must be used, and:

- Must be signed by both inmate and private counsel
- Must be submitted at least 45 days prior to hearing date.
- Private counsel must be ready to proceed with scheduled hearing date.
- If submitted within 45 days of hearing, board will deny or approve.
- If submitted during week of hearing, presiding hearing officer will deny or approve request

The form also is the venue for requesting waivers, stipulations and postponements of hearings and is also used when the parole panel decides an already underway hearing should be continued. The policies governing waivers, stipulations and postponements are specific, and if you're in need of more information on these issues, ask your attorney. If that fails to produce results, write LSA and request to BPH handout on these procedures, as well as what the Board considers 'good cause' to eschew a hearing.



THE BOYS NAMED SUE

As we've noted before, we at LSA handle A LOT of mail. About 200 letters a month on general questions and issues, and now, with letters from those participating in The Amends Project coming in, our mail desk is always busy. It takes all the volunteers working steadily to keep up with the pace, and sometimes we fall a bit behind.

And as we've mentioned before, we're volunteers—no pay. We do this because we believe we can help and inform those who are trying their best to change their lives and come home.

So imagine (here's where empathy comes in) how we react to the occasional letter (two in recent months) whose writers grandly proclaim they're contacting us to let us know—we're being sued. By those writing us. The guys we're trying to assist. Are going to sue us.

Why? Basically, for quoting court cases (public documents, by the way) about their litigation. One proclaimed himself a 'sovereign individual' (don't even get us started on that malarkey) and therefore when we quoted the court opinion in his case, which used his name, without first getting his sovereign permission, we were in violation of a law (which one was a bit vague...probably the same one he says CDCR is violating by keeping his sovereign personage in prison...and how's that workin' for ya?).

The second because we slandered him (libel really, because it was written) by quoting from a court document that he claims was wrong and thus damaged his reputation. Uh huh. Both gents 'kindly' offered to settle for 6-figure amounts, out of the goodness of their hearts; but of course, we'd have to pay up immediately.

Really guys? You're going to bite the hand that's trying to feed you? Oh, and by the way; never, in the entire cumulative history of LSA, have we ever had anything approaching a 6-figure bank account.

So our suggestion is this; if you want to sue because your name is in a public, court document, try suing the court. Or don't litigate, which will keep your name out of court decisions. Of course, having been convicted of a crime and now a prisoner, your name is somewhere in public documents.

And if you decide you just have to sue us—see what attorney you can find to take on the case. And don't write us to try and intimidate us into sending you money. That's pretty much the definition of extortion, and extortion, by the way, is a crime. You've got the right attitude to go before the parole board—we can hear them now; manipulative, minimizing, grandiosity, and, our favorite, criminogenic thinking.

We don't have time to read and respond to your letters—we've got more important things to do, answering letters from those who truly want to make themselves suitable and come home. Get real.

WE'RE ASKING FOR YOUR HELP

So if you decide not to sue us, maybe you can help us. How can you help us? Several ways. And all the ways you can help us will help us help you.

- 1) We need your CRA, if you are YOPH qualified and have had a recent CRA that discusses (or maybe doesn't) those factors, we'd like to see it. We'll make a copy and send your original back, but these will help us in our on-going efforts to hold the FAD at least accountable, if not culpable.
- 2) Send us your opinion of your attorney's performance, the conduct of your parole hearing and any other relevant factors. We drive change on the basis of factual information, and no one has the facts fresher than you.
- 3) We need stamps. Receiving over 200 letters a month in general correspondence, our postage bill is considerable. If you can spare two or three stamps, in addition to the questions we can answer for you, you're helping.
- 4) Designate us as the beneficiary of your food sale. Those amounts really add up and are of great assistance to our (meager) coffers. Write us for info, if you need it.
- 5) Subscribe to CLN, don't just copy someone else's. Yes, we know it happens, and we know it won't stop. But CLN is barely self-supporting, and each 'pirate' copy makes it less so. Yes, we know the subscription rate is going up (in January) but so has postage, printing and just being alive. And if you send in your subscription before January, you'll still get the old rate of \$30 per year. And please don't ask for a free CLN---every issue published costs about \$2,500, so we don't have a lot of extras.
- 6) Please don't ask us to be your pen pals or send salacious letters. Really, guys, we're not looking for a companion (some of us are even married) and really don't have time to waste. We don't do this because we're lonely, but because we believe in the cause of lifers. Keep your letter on subject and as to the point as possible. We appreciate it!